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COMMUNICATIONS INTERNATIONAL

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EX PARTE OR LATE FILED

January 16, 1997

EX PARTE

William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

RECEIVED
JAN 17 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Dear Mr. Caton:

Re: CPNI, CC Docket No. 96-115

Today, Alan Westin, Professor of Law and Public Government, Columbia University, Rex Mitchell, Vice President, Regulatory, Pacific Bell, Michael Yourshaw of Wiley, Rein & Fielding, Peter Filon, intern, Columbus School of Law, Catholic University, and I met with Regina Keeney, Bureau Chief, A. Richard Metzger, Jr., Deputy Chief, Laurence Atlas, Associate Chief, Paul Gallant, Assistant to the Chief, Common Carrier Bureau; and William Kehoe III, Dorothy T. Atwood and Gayle Teicher, all the Common Carrier Bureau, to discuss issues summarized in Attachment A. Copies of "Public Attitudes Toward Local Telephone Company Use of CPNI", included as Attachment B, were also distributed. Please include these materials in the above-referenced docket. We are submitting two copies of this notice, in accordance with Section 1.206(a)(1) of the Commission's rules.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions.

Sincerely yours,



Attachments

cc: L. Atlas
D. Atwood
P. Gallant
R. Keeney
B. Kehoe
A.R. Metzger
G. Teicher

No. of Copies rec'd
List ABCDE

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CPNI Ex Parte (CC Docket No. 96-115)

- Public attitudes
- Notice and opt-out in other industries
- Competition vs. privacy
- Joint marketing

Pacific Telesis Group
January 16, 1997

Public Attitudes Toward Local Telephone Company Use of CPNI

- Pacific Telesis Group sponsored a national opinion survey by Opinion Research Corporation and Prof. Alan F. Westin, Columbia University
 - The public is concerned about maintaining personal privacy
 - The public also wants their telephone company to communicate with them about new services

The Public Overwhelmingly Wants Business Communications from Their Telephone Company

- 88% of the public says it is acceptable for their telephone company to “communicate with them from time to time about new products, or special discounts they are offering to customers”
- Providing an opt out procedure raises acceptance of such business communications to 93%

Consumers Trust Their Local Telephone Company with CPNI

- Local telephone companies received a 78% High and Medium trust level regarding their use and protection of consumers' confidential information
 - This is the same high group as hospitals, banks, and employers
 - They were slightly ahead of long distance telephone companies
 - This was much higher trust than was given to insurance companies and cable television companies
- Less than 10% of the public say their local telephone company has ever released their personal telephone information improperly

Most Consumers Want To Learn from Their Local Telephone Company About New Services

- 64% say they want to hear about services such as “voice mail, long distance calling plans, cellular telephone services, and expanded cable television or home interactive video services”
 - Even higher percentages of Hispanics, African-Americans, women, and young adults
- 64% also say it’s acceptable for the local telephone company to use its CPNI to target such offers
 - With notice and opt out, this acceptance level rises to 80%
- 69% say it’s OK for a service representative to look up CPNI during an inbound call to offer new services

Carrier Use of Its CPNI Does Not Fit the “Sensitive Information/Opt-In” Model

- Carrier use of CPNI does not raise the risks of embarrassment, humiliation, or stigma
- The relationship between carrier and customer does not critically depend on the confidentiality of CPNI
- CPNI is not used, and has little potential to be used, to make decisions affecting an individual’s access to employment, insurance, licenses, or other entitlements or benefits

Use of personal information which is not highly sensitive is customarily used and disclosed pursuant to an opt-out procedure

- Prescreening provisions of the Fair Credit Reporting Act (as amended by the Consumer Credit Reporting Reform Act of 1996)
- Medical directory information under the Uniform Health Care Information Act
- Driver's license information under the Driver's Privacy Protection Act
- State statutes in areas of telecommunications, financial services, direct marketing, health and medical records

There Is High Public Support for Companies Sharing Customer Information With Their Affiliates for Related Marketing

- Almost two out of three consumers support “subsidiaries” getting customer information “to make offers of services or products” (1994 Harris survey)
- This is widely adopted by legislation and regulation in areas such as credit reporting and medical records

Competition vs. Privacy

- Section 222's provisions deal separately with competition and privacy
 - Section 222 already makes ample provision for enhancing competition and protecting privacy
 - The Commission does not need to create additional privacy or competitive provisions or alter those that already exist

Competition

- Prohibition on use of another carrier's CPNI for marketing (§222(b))
- Mandatory disclosure on affirmative written request (§222(c)(2))
- Nondiscriminatory access to aggregate information used by a LEC for any purpose other than providing services from which the aggregate information is derived (§222(c)(3))
- Mandatory provision of subscriber list information by LECs on an unbundled, nondiscriminatory basis (§222(e))

Privacy

- Duty to protect proprietary information of carriers and all customers (§222(a))
- Limits on use of another carrier's CPNI (§222(b))
- Duty to protect CPNI of all customers (§222(c)(1))
- Approval required to use, disclose, or permit access to CPNI (§222(c)(1))
- Affirmative written request required for release of CPNI to third parties (§222(c)(2))

The Commission Should Not Treat Section 222(c)(1) as a Competitive Provision

- Section 222(c)(1) is a privacy provision
 - It deals with how a carrier may use CPNI internally
 - It allows carriers to obtain approval to use CPNI internally by a notice and opt out process
- The Act does not require a carrier that obtains approval for internal use of CPNI by a notice and opt out process to obtain such approval on behalf of other carriers
 - Congress clearly intended for a carrier to communicate with its own customers in seeking approval
 - Congress did not intend for one carrier to be forced to act on behalf of another carrier

Aggregate Customer Information

- The Commission should not create additional telecommunications service “buckets”
 - The three buckets the Commission proposes (local service, long distance service, and CMRS) adequately comport with Section 222(c)(1)
 - Increasing the number of buckets may inadvertently hamper LECs’ ability to use aggregate customer information for product planning, research and development, and other efforts

LECs Use Aggregate Customer Information To Develop New Products

- LECs generally use aggregate customer information from multiple products when developing new products
 - Examples: product volumes, customer locations
- This innovation is beneficial to consumers, and is at the heart of the 1996 Act
 - Squelching this innovation will harm consumers

If the Commission Were To Increase the Number of Buckets, LECs Would Be Less Able To Serve Customers

- LECs could not
 - use aggregate customer information from a broad array of services to develop new products and services
 - use aggregate customer information for routine business purposes
 - Measuring productivity
 - Forecasting
 - Tracking revenues and expenses
- This result is antithetical to the intent of the 1996 Act

Special Restrictions in Section 222(c)(3) Apply to LEC Use of Aggregate Customer Information Without Consent

- LECs may use such information for the telecommunications service from which it was derived, or services necessary to or used in the provision of such services
- LECs may use aggregate customer information for other purposes, but it must then make the information available to others
- These restrictions are adequate to ensure appropriate use of aggregate customer information

A BOC May Seek Customer Approval To Use CPNI for Joint Marketing Without Making Solicitations for Other Carriers

- This is necessary for a BOC to engage in permissible joint marketing activities, including targeting customers, responding to inquiries, processing orders, and performing sales functions
- Section 272(g)(3) exempts requests to use CPNI in support of joint marketing efforts with a BOC's interLATA affiliate from the nondiscrimination requirement of section 272(c)(1)
 - A BOC may solicit approval to use CPNI for its own joint marketing of the affiliate's services or to share CPNI with the affiliate pursuant to a joint marketing agreement
- Requiring a BOC to solicit approvals for other carriers would violate the First Amendment

A BOC May Provide CPNI to Its InterLATA Affiliate in Support of Joint Marketing Without Providing It to Others

- The provision of CPNI is a necessary part of sharing the resources of the two companies for successful joint marketing
- Customer approval is required
- This joint marketing function is covered by section 272(g)(3)
- A requirement to make CPNI available to others would violate the prohibition against disclosure in section 222(c)(1)
- The BOC will provide CPNI to other companies who have obtained the requisite customer approval under section 222(c)(2)

Summary

- Customers are overwhelmingly comfortable with their telecommunications providers using CPNI to tell them about new services, especially if given the ability to opt out
- Legislation and industry practice in banking, credit, health care, and direct marketing provide ample precedent for the notice and opt-out practice
- The Commission cannot increase the number of proposed “buckets” without harming LECs’ ability to use aggregate CPNI to develop new products and services
- Both sections 222 and 272 allow the BOC and its interLATA affiliate to use CPNI for joint marketing with adequate customer approval, without providing it to others

**PUBLIC ATTITUDES TOWARD
LOCAL TELEPHONE COMPANY
USE OF CPNI**

**REPORT OF A
NATIONAL OPINION SURVEY
CONDUCTED NOVEMBER 14-17, 1996**

**BY
OPINION RESEARCH CORPORATION,
PRINCETON, N.J.**

AND

**PROF. ALAN F. WESTIN,
COLUMBIA UNIVERSITY**

**SPONSORED BY
PACIFIC TELESIS GROUP**

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- B. Description of Opinion Research Corporation
- C. Description of the ORC Weekly CARAVAN
- D. Methodology and Sample for This Survey
- E. Questions and Tabulated Responses

Executive Summary

A representative national survey on issues relating to local telephone company use of CPNI information was conducted in November of 1996 by Opinion Research Corporation of Princeton, New Jersey and Dr. Alan F. Westin, Professor of Public Law and Government, Columbia University, sponsored by Pacific Telesis Group.

The major findings of the survey relevant to the FCC's CC Docket No. 96-115 Rule Making are:

- Public concerns over threats to privacy and the desire for better control over the uses made by companies of customer information are very high, and still rising.
- At the same time, large majorities of the public believe it is acceptable for businesses to communicate to their own customers to offer them additional services and benefits, and especially if an opt out procedure is provided.
- This is specifically true of local telephone companies communicating with their customers through use of CPNI data.
- The public has strong confidence in local telephone companies to use the personal information they collect about customers in a responsible way, and to protect its confidentiality.
- Less than 10% of the public believe their local telephone company has ever released their information in an improper way.
- The availability of an opt out procedure brings initial approvals of local telephone company use of CPNI data from the two out of three respondent level up to the 80% range of public approval.

Introduction

Pacific Telesis Group commissioned Opinion Research Corporation of Princeton, New Jersey (ORC) and Dr. Alan F. Westin, Professor of Public Law & Government at Columbia University, to develop, conduct, and report the results of a national survey of public opinion about the use of customer proprietary network information (CPNI) by telecommunications carriers. We will refer to this as the "CPNI Survey."

Pacific Telesis believes the CPNI Survey's findings represent a fresh and highly valuable contribution to the Federal Communications Commission's CC Docket No. 96-115 Rule Making.

Dr. Westin is widely considered the nation's leading expert on information privacy, and is publisher of *Privacy & American Business*, the well-known national report on business-privacy issues. He has been the academic advisor to 22 national surveys on privacy since 1978, 15 of these with Louis Harris and Associates and 7 with Opinion Research Corporation. (A Privacy Vita for Dr. Westin is included as Appendix A).

Opinion Research Corporation has been, for over 50 years, a leading U.S. and international survey research firm, with a long roster of business, government, and non-profit clients. (A description of ORC appears in Appendix B) ORC conducts a weekly omnibus telephone survey ("CARAVAN") of a national probability sample of 1,000 adults 18 years of age and older, living in private households in the United States. (A description of the weekly CARAVAN survey is included as Appendix C)

The questions relating to CPNI were placed on the weekly ORC CARAVAN survey for November 14-17, 1996. (A full description of the methodology used and demographic make-up of the sample of 1,011 adults responding to our questions will be found in Appendix D) A copy of the entire CARAVAN question set relating to CPNI, with the tabulations obtained, has been attached as Appendix E.

This report to the FCC has been written by Dr. Westin. It was reviewed for accuracy and completeness of data presentation by Opinion Research Corporation and approved by ORC for public release.

1. Public Concerns About Threats to Privacy Are Very High and Still Rising

The CPNI survey asked four questions about privacy attitudes, to probe levels of concern and define the environment within which the FCC's CPNI Rule Making is unfolding. (We put these four questions at the end of the survey, to avoid any influence on the specific CPNI issues that might be exerted by presenting respondents at the outset with privacy-oriented questions.)

Our basic, long-term trend question (developed by Dr. Westin and used in national privacy surveys since 1978) asks respondents: "How concerned are you about threats to your personal privacy in America today." The choices given are: "very concerned, somewhat concerned, not very concerned, or not concerned at all."

When first asked in 1978, in the aftermath of Watergate, the response was 68% concerned -- 33% "very concerned" and 31% "somewhat concerned". When asked in mid-1995, after issues of consumer, employee, and citizen privacy in the increasingly computerized government and business environment had been widely discussed in the mass media in the 1990's, 82% of the public said they were concerned -- 47% saying "very concerned" and 35% "somewhat concerned."¹

In the CPNI Survey, far from receding, concern about privacy continued to climb. Eighty-nine per cent of the public in November of 1996 -- almost nine out of ten Americans -- now say they are concerned about privacy threats. And, 55.5% now say they are "very concerned" with 33.1% "somewhat concerned."

An 8.5% rise in "very concerned" sentiment within one year indicates clearly that public apprehension about privacy threats has not "crested"; rather, it is still rising significantly in the late 1990's.

2. Public Concern is Also Very High Over Uses of Consumer Information by Businesses

A set of three additional privacy-trend questions on the CPNI survey asked respondents whether they agreed or disagreed with a number of statements about privacy. The answers to these questions were not only useful in themselves, compared to replies on these questions recorded in earlier years, but also to create a High, Medium, and Low concern About Privacy Index. This was used to see how respondents with certain attitudes -- such as interest in hearing about new telephone services or having exercised an opt out -- divided along lines of intensity of privacy concern.

¹ Figures for this question between 1978 and 1995 appear in *The Equifax-Harris Mid-Decade Consumer Privacy Survey, 1995*, conducted by Louis Harris & Associates and Dr. Alan F. Westin.